

(1993) 01 KAR CK 0023
In the Karnataka High Court
Case No : W.A. No. 291 of 1991

Venugopal

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Court Fees Act, 1870 — Section 6 (3), 6 (4)
High Court of Karnataka Writ Proceedings Rules, 1977 — Rule 36, 7

Citation : (1993) ILR (Kar) 1312

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : M. Sreenivas, for P. Vishwanatha Shetty, for the Appellant; S.R. Nayak, Government Advocate for R-1 and R-2 and K. Raghavendra Rao, for R-3, for the Respondent

Judgement

K.A. Swami, Ag. C.J.

1. The Question for Consideration in this appeal is as to whether a court fee of Rs.100/- paid is sufficient?

2. According to the learned Counsel for the appellant, as per Rule 7 of the Writ Proceedings Rules, 1977 (hereinafter referred to as the "Rules") read with Rule 36 thereof, the Court fee of Rs.100/- paid by the appellant is sufficient. Whereas, Sri S. R. Nayak, learned Government Advocate, submits that respondents Nos.4 and 5 have filled the Writ Petitions in common form, but each one claiming the relief in his own right; therefore the Writ Petitions were not for enforcement of any joint interest or joint right; that Rule 7 of the Rules, as interpreted by this Court in Ramesh Pande and Others Vs. State of Karnataka and Others, the appellant has to pay a court fee of Rs.200/-.

3 On the contrary, it is contended by the appellant that he is one of the respondents in the Writ Petitions; that both the petitioners have challenged the action of the State Government approving his appointment as Principal of the

College known as Gowtham Pre-University College, Sakaleshpur, Hassan District, and the Writ Petitions have been decided by a common order; that the fact that the Writ Petitions have been filed by respondents Nos. 4 and 5 in common form and a court fee of Rs.200/- had been paid by them would not in any way make the appellant to pay a court fee of Rs.200/- because as far as he is concerned, the reliefs sought for by the petitioners against him is one and the same therefore the Division Bench Decision of this Court in ANANTHA PADMANABHAIAH v. TAHSILDAR & EXECUTIVE MAGISTRATE, T.NARSIPUR 1981 (1) KarLJ 505 would squarely apply. It is also further submitted that in another Decision of a Division Bench of this Court in Writ Appeals Nos.1877 to 1887 of 1986 decided on 22nd July 1986, it has been held that one set of court fee would be sufficient and that further it is directed to refund the excess court fee paid. It is also further submitted that following the Decision in K.M. Nagaraj and Ors v. State of Karnataka and Ors., W.A. Nos. 1877 to 1887 DD 22.7 similar Order has been passed by this Court in Writ Appeals Nos. 1910 to 1913 of 1992, decided on 30th October 1992, Vignan Educational Foundation v. Vinayak and 24 Ors., W.A. Nos. 1910 to 1913 DD 30.10.1992.

4. Rules 7 and 36 of the Rules, read as follows;

"7. PROCEDURE FOR FILING COMMON OR JOINT PETITIONS;

(1) Several persons having similar but separate and distinct interest in the subject matter of controversy involving common questions of law and facts may file a common petition. Such a petition shall be treated as equivalent to the filing of such number of writ petitions as there are petitioners and shall be numbered accordingly and the Court Fee payable on such writ petitions, when filed separately. For all other purposes, such as issue of notice etc., it shall be treated as one Writ Petition. Such common Writ Petition shall be in Form No. III appended to these Rules and shall be supported by the affidavit of any one of the petitioners as in Form No. II. For such common petition one Vakalat with one set of Court Fee stamp shall be sufficient.

(2) Several persons having common or joint interest but not seeking any individual relief interim or final may file a single petition."

xxx xxx xxx "36. Appeal against common Order on several writ petitions. The provisions of Rule 7 shall, mutatis mutandis apply to appeals filed from a common order."

5. In order to determine whether the appellant is required to pay a court fee of Rs.200/- it is necessary to refer to the cause of action pleaded in the Writ Petitions and the relief sought for. Writ Petitions Nos. 13186 and 13187 of 1992 were filed in common form by respondents 4 and 5 respectively. They are the Lecturers. They challenged the approval of the appointment of the appellant herein as Principal of a College, in which they are working as Lecturers. Each of them has pleaded in the Writ Petitions his own right that he is entitled to become Principal; therefore the appointment of the appellant as Principal is illegal.

Learned single Judge has dismissed the Writ Petitions by a common order with the following observations:

"19. Since it is said that C.R.P. is pending challenging the order passed by the Educational Appellate Tribunal on an appeal preferred by one of the petitioners where selection and appointment of 4th respondent has been questioned before this Court, I decline to comment upon correctness of the order challenged in the said C.R.P. It is for the petitioners or the petitioner to substantiate his case in the said C.R.P. Accordingly, these petitions are dismissed. No costs. All other contentions are kept open."

6. In Ramesh Pande's case (supra), Rule 7 of the Rules, has been interpreted and it has been specifically laid down that in a case where each of the petitioners will have only a separate and distinct interest in the subject matter of the controversy in the Writ Petition, though the injury suffered by each would be similar; and the common interest is not the same as similar interest; therefore the petitioners would be entitled to present a single Writ Petition by reason of the Explanation to Rule 7(2) of the Rules. It is also further held that in a case where each of the petitioners will have his own distinct and separate cause of action, the Writ Petition embraced more than one cause of action and separate reliefs, the Petition would be chargeable with the aggregate amount of court fee, as if separate Petitions are presented by each of the petitioners, as required by Section 6(3) and (4) of the Court Fess Act.

7. As already pointed out in the instant case also, each of the petitioners in the Writ Petitions has distinct and separate interest and not a common or joint interest in the subject matter of the Writ Petitions and as such, they are entitled to file a common Writ Petition. However, they are liable to pay the separate Court fee and accordingly, they have paid a separate Court fee. Whereas, in Ananthapadmanabhaiah's case (supra), the petitioner therein was only one, who had several mortgages in his favour, which were considered by the Executive Magistrate under the Debt Relief Act, and a common order was passed. The petitioner had challenged the same in the Writ Petition. The office raised an objection that the petitioner was required to pay a court fee in respect of each of the mortgages because the cause of action was distinct and the petitioner had clubbed several causes of action in one Petition. The Division Bench over-ruled the office objection and held that it would be open to the petitioner to include several causes of action in one Petition and in that event it would not be necessary for him to pay a separate court fee on each cause of action. It was further held that Rule 7 of the Rules, dealt with common and joint petitions filed by several persons and it had not dealt with petitions filed by the same person, but based upon different causes of action and prayed for different reliefs upon such causes of action. Thus, it is clear that the Decision in Ananthapadmanabhaiah's proceeded on a different set of facts and as such, it was held that Rule 7 of the Rules, was not attracted.

8. The facts in Ramesh Pande's case and the case on hand are similar. The

Decision in K. M. Nagaraj's case does not contain any reason nor does it refer to the earlier Decision in Ramesh Pande's case. It has been stated in that Decision, as follows;

"These are appeals filed by persons who have filed individual and separate Writ Petitions. In our opinion, it is unnecessary to the separate appeals, since the appellants have got a common grievance against the order made by the learned single Judge vacating the interim stay in the Writ Petitions. Therefore, the appellants are permitted to file only one appeal. The excess Court fee of Rs.1,000/- paid is ordered to be refunded."

In the aforesaid Decision, there is no reference to the provisions of Rules 7 and 36 of the Rules. The principle embodied in Rule 7 of the Rules as to similar but separate and distinct interest in the subject matter of controversy is not noticed. Therefore, we are of the view that the Decision in K. M. Nagaraj's case is per incuriam. Similarly, in the Decision in Writ Appeals Nos. 1910 to 1913 of 1992, Rules 7 and 36 of the Rules are not taken notice of. Only the Decision in K. M. Nagaraj's case has been referred and on the basis of that Decision the order is passed. Therefore, it is not possible to hold that the Decision in Writ Appeals Nos. 1910 to 1913 of 1992 stands differently from, the one rendered in K. M. Nagaraj's case. We are of the view that this is a case which is governed by the Decision in Ramesh Pande's case. We, accordingly, uphold the office objection and hold that the deficit Court fee of Rs.100/- be paid in two weeks from today.